

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHANG YAN CHEN, *on his own behalf and on
behalf of others similarly situated,* :
:
Plaintiff, : 19-CV-7654 (VEC)
:
-against- : ORDER
:
LILIS 200 WEST 57TH CORP. d/b/a Lili's 57 :
Asian Cuisine & Sushi Bar; 792 RESTAURANT :
FOOD CORP. d/b/a Lilli and Loo; ALAN :
PHILLIPS; JONAH PHILLIPS; THEAN CHOO :
CHONG a/k/a Alfred Chong; SIEW MOY LOW :
a/k/a Maggie Low; STEW M. LOW; EPHAN :
"DOE"; and "MIGI" DOE, :
:
Defendants. :
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VALERIE CAPRONI, United States District Judge:

WHEREAS on June 10, 2021, the parties submitted a joint status letter in anticipation of an upcoming status conference, (Dkt. 73);

WHEREAS in their joint letter, Plaintiff alleged certain deficiencies with the collective action list provided by Defendants;

WHEREAS on June 21, 2021, the parties appeared for a status conference, at which the Court entertained Plaintiff's allegations concerning the allegedly deficient collective action list;

WHEREAS after the June 21, 2021 conference, the Court entered an order extending the deadline for potential collective member Jian Hua Li, the only individual whom Plaintiff had identified with any specificity (Dkt. 78);

WHEREAS on June 21, 2021, the Court also entered a Case Management Plan containing firm deadlines for discovery (Dkt. 77);

WHEREAS on July 2, 2021, Plaintiff filed a letter motion to compel Defendants to produce “the employee mailing list of FLSA collective members,” among other relief related to production of the list of potential collective members and publication of notice concerning this action (Dkt. 79); and

WHEREAS on July 9, 2021, Defendants responded in opposition to Plaintiff’s letter motion (Dkt. 80);

IT IS HEREBY ORDERED that Plaintiff’s motion to compel is DENIED. As to the issues and requests that overlap with those asserted in the parties’ June 10, 2021 joint letter, and raised at the June 21, 2021 conference, the Court already determined that the only relief to which Plaintiff was entitled was an extension of the deadline for potential collective member Jian Hua Li to opt in. Plaintiff neglects to mention the June 10, 2021 letter or the June 21, 2021 conference in his motion to compel, seemingly hoping either that the Court would forget about its prior consideration of these matters or that Plaintiff would be able to convince the Court to reconsider its decision, without providing any new information. Moreover, with respect to those issues and requests that Plaintiff did not include in his June 10 letter or raise at the June 21 conference, Plaintiff’s motion is untimely. In the parties’ June 10 joint letter, Plaintiff asserted his issues with Defendants’ collective action list; Plaintiff had every opportunity to include his present complaints and requested relief in the joint letter and to raise those requests at the June 21 conference, but he failed to do so. Accordingly, Plaintiff has waived his right to assert these issues by failing to raise them on at least two prior occasions. The Court has entered a Case Management Plan setting forth discovery deadlines in this case, and the time to raise the present issues has passed.

IT IS FURTHER ORDERED that not later than **July 19, 2021**, Plaintiff’s counsel must show cause why this Court should not impose sanctions for falsely asserting in his letter that the

Court ordered Defendants to “post” notice of this action when the Court explicitly rejected Plaintiff’s request that Defendants be ordered to post notice at their restaurants. *See* Opinion at 13, Dkt. 69.

The Clerk of Court is respectfully directed to terminate the open motion at Dkt. 79.

SO ORDERED.

Date: July 12, 2021
New York, NY


VALERIE CAPRONI
United States District Judge